

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Appropriate Framework for Broadband	)	CC Docket No. 02-33
Access to the Internet over Wireline Facilities	)	
	)	
Universal Service Obligations of Broadband	)	
Providers	)	
	)	
Computer III Further Remand Proceedings:	)	CC Dockets Nos. 95-20, 98-10
Bell Operating Company Provision of	)	
Enhanced Services; 1998 Biennial Regulatory	)	
Review – Review of Computer III and ONA	)	
Safeguards and Requirements	)	

**COMMENTS OF THE NATIONAL CABLE &  
TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (“NCTA”) hereby submits the following comments in response to the Commission’s *Notice of Proposed Rulemaking* in the above-captioned proceeding, specifically with respect to the question of whether universal service contribution obligations should be extended to providers of broadband Internet access.<sup>1</sup>

NCTA is the principal trade association of the cable television industry. Its members provide cable television and broadband Internet access services throughout the United States. The Commission’s resolution of this proceeding may significantly affect the terms under which cable systems offer services to their subscribers.

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<sup>1</sup> *In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; Computer III Further Remand Proceedings; Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*; CC Docket No. 02-33, CC Dockets Nos. 95-20, 98-10; *Notice of Proposed Rulemaking*; FCC 02-42 (rel. Feb. 15, 2002) (“*Wireline Broadband NPRM*”).

## DISCUSSION

The Commission's existing rules require all telecommunications carriers providing interstate telecommunications services, including broadband services, to contribute to the Federal Universal Service Fund ("USF").<sup>2</sup> Providers of interstate telecommunications that offer telecommunications for a fee on a non-common carrier basis are also required to contribute, including those who lease excess telecommunications capacity on a private contractual basis.<sup>3</sup> Entities that use telecommunications solely to meet their internal needs, however, are not required to contribute.<sup>4</sup> The Commission now seeks comment on whether changes in the marketplace, technology, and its regulatory structure justify requiring providers of facilities-based broadband Internet access services to contribute to the USF, even if such entities use telecommunications only for their internal needs.<sup>5</sup>

The cable industry fully supports the universal service principles established in the Telecommunications Act of 1996.<sup>6</sup> Cable operators strongly believe that quality telecommunications services should be available to all regions of the country at just, reasonable

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<sup>2</sup> 47 C.F.R. § 54.706(a).

<sup>3</sup> 47 C.F.R. § 54.706(b); *see also Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776 at ¶¶ 39, 796 (1997) ("*Universal Service Order*").

<sup>4</sup> *Universal Service Order*, 12 FCC Rcd 8776 at ¶ 799.

<sup>5</sup> *See Wireline Broadband NPRM* at ¶¶ 66, 79. While the FCC apparently has concluded that entities that use telecommunications solely for their internal needs are "provider[s] of interstate telecommunications" that may be required to contribute to the USF under section 254(d), it is not clear that such entities are "providing" interstate telecommunications for purposes of that section. *Cf. Federal-State Joint Board on Universal Service, Report to Congress*, 13 FCC Rcd 11501 at ¶ 70 (1998) ("*Universal Service Report to Congress*") (noting that the FCC will "consider the status of entities that provide transmission to meet their internal needs. *To the extent that we conclude* that such entities provide telecommunications, we would consider, among other things, whether there are efficient, effective ways to require information service providers that provide telecommunications to meet their own internal needs to contribute to universal service support so that our regulations do not create an artificial incentive for information service providers to integrate vertically." (emphasis added)).

<sup>6</sup> *See* 47 U.S.C. § 254(b).

and affordable rates,<sup>7</sup> and that access to advanced telecommunications and information services should be provided in all areas of the country.<sup>8</sup> In keeping with the statutory directive that “[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service,”<sup>9</sup> cable operators already contribute to the USF when, as competitive local exchange carriers (“CLECs”), they offer telecommunications services directly to customers.

Providers of cable modem services are not required to contribute to the USF because they do not separately offer telecommunications to end users, but rather only use telecommunications to provide cable modem service to end users.<sup>10</sup> Before extending the universal service contribution requirement to all providers of facilities-based broadband Internet access services generally and cable modem services in particular, the Commission must first find that such an extension is in the public interest.<sup>11</sup> As part of that inquiry, NCTA respectfully submits that the Commission should address certain threshold issues.

First, the Commission should evaluate the current size of the USF, looking at the level of contributions under its existing regime. The Commission’s universal service program is currently in a state of flux. In addition to the present proceeding, there are at least five other active proceedings in which the Commission is considering whether to reform various aspects of the universal service program, including its current methodology for assessing universal service

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<sup>7</sup> 47 U.S.C. § 254(b)(1).

<sup>8</sup> 47 U.S.C. § 254(b)(2).

<sup>9</sup> 47 U.S.C. § 254(b)(4).

<sup>10</sup> See *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, GN Docket No. 00-185, CS Docket No. 02-52, *Declaratory Ruling and Notice of Proposed Rulemaking*, FCC 02-77 at ¶ 41 (rel. Mar. 15, 2002) (“*Cable Access NPRM*”) (“The cable operator providing cable modem service over its own facilities . . . is not offering telecommunications to the end user, but rather is merely using telecommunications to provide end users with cable modem service.”).

contributions,<sup>12</sup> the rural health care universal service support mechanism,<sup>13</sup> the schools and libraries universal service support mechanism,<sup>14</sup> and whether universal service contributions may be based on projected revenues for the current quarter instead of historical revenues from two quarters prior.<sup>15</sup> The Commission also is seeking comment on its previous decision to establish a federal high-cost universal service support mechanism for non-rural carriers based on forward-looking economic costs, which was remanded by the Tenth Circuit.<sup>16</sup> The uncertainty stemming from these multiple proceedings, the expansion of the USF in the past few years, and the Commission's stated intent to reform the USF contributions process all support careful scrutiny of the current program before serious consideration is given to expanding the scope of contributors.

If the Commission determines that the public interest requires it to expand the number of entities that currently contribute to the USF, the Commission should then address any and all proposals to expand the base for USF contributions at that time and in one comprehensive proceeding. Such a proceeding should include the Commission's current proposal to require all

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<sup>11</sup> 47 U.S.C. § 254(d).

<sup>12</sup> *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, *Further Notice of Proposed Rulemaking and Report and Order*, FCC 02-43 (rel. Feb. 26, 2002) (“*Contribution Methodology Further Notice*”).

<sup>13</sup> *In the Matter of Rural Health Care Support Mechanism*, WC Docket No. 02-60, *Notice of Proposed Rulemaking*, FCC 02-122 (rel. Apr. 19, 2002).

<sup>14</sup> *In the Matter of Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, *Notice of Proposed Rulemaking and Order*, FCC 02-8 (rel. Jan. 25, 2002).

<sup>15</sup> *Public Notice, Commission Seeks Comment on AT&T Request to Contribute to Universal Service Based on Projected Revenues*, CC Docket No. 96-45, DA 02-376 (rel. Feb. 26, 2002).

<sup>16</sup> *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Notice of Proposed Rulemaking and Order*, FCC 02-41 (rel. Feb. 15, 2002). In particular, the Commission must ensure that as the incumbent local exchange carriers continue to sell off their rural exchanges, they do not continue to receive universal service support associated with those exchanges. See 47 C.F.R. § 54.305. The Commission is also seeking comment on interstate access support issues in its proceeding on the Fifth Circuit's remand of the CALLS order. *Public Notice, Common Carrier Bureau Seeks Comment on Remand of \$650 Million Support*

providers of facilities-based broadband Internet access services to contribute to the USF,<sup>17</sup> as well as proposals made in the *Contribution Methodology* proceeding by SBC, BellSouth, and Verizon.<sup>18</sup> Addressing all such proposals in a comprehensive manner is compelled by the statutory requirement for the Commission to ensure that its contribution policies are equitable and nondiscriminatory.<sup>19</sup>

The Commission also should consider the effect that requiring USF contributions from all facilities-based broadband Internet access services would have on the Commission's "primary policy goal" of promoting broadband deployment.<sup>20</sup> Broadband Internet access is a still developing service that competes directly with narrowband Internet access services. There is a risk that imposing USF charges only on facilities-based broadband Internet access services could slow the current rate of deployment of broadband facilities and services.

Whether the Commission broadens its inquiry as NCTA believes it should, or continues to focus only on facilities-based broadband Internet access service, the Commission should take into account the developing state of the law regarding cable modem services. Consistent with the Commission's recent rulings, the cable industry believes that the Communications Act

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*Amount Under Interstate Access Support Mechanism for Price Cap Carriers*, CC Docket Nos. 92-262, 94-1, 99-249, and 96-45, DA-2817 (Dec. 4, 2001).

<sup>17</sup> *Wireline Broadband NPRM* at ¶ 79.

<sup>18</sup> In comments filed in that docket, SBC and BellSouth suggest that all providers of telecommunications, including common carriers, private carriers, ISPs, and other content providers, regardless of technology platform or facilities ownership, should contribute to the USF based on their interstate telecommunications revenues. SBC Comments at Appendix A. Verizon suggests that all providers of services similar to DSL should contribute to the support of schools and libraries. Verizon Comments at 24.

<sup>19</sup> *Cf.* 47 U.S.C. § 254(b)(4).

<sup>20</sup> See *Wireline Broadband NPRM* at ¶ 3 ("First, it is the Commission's primary policy goal to encourage the ubiquitous availability of broadband to all Americans.").

prohibits local governments from imposing franchise fees on cable modem services.<sup>21</sup> Some local governments dispute this view, contending that the classification of cable modem services as information services should not prevent them from collecting franchise fees on cable modem revenues. If local governments are permitted to impose franchise fees on cable modem services, however, and the Commission were to assess USF contributions on cable modem service, cable modem service subscribers will be subject to inequitable multiple fees, a scheme that leaves cable modem service providers disadvantaged vis-à-vis their competitors, such as DSL service providers, who would not be subject to this regime.

In determining whether providers of facilities-based broadband Internet access services should be required to contribute to the USF, it should weigh the fact that the USF is a mechanism for “spread[ing] the burden of maintaining and advancing a nationwide public switched network across all carriers and their customers.”<sup>22</sup> To the extent that such providers do not offer public switched service or the functional equivalent – and, indeed, may not even use the PSTN – there is less – perhaps no – justification for requiring such entities to contribute to the USF.

Finally, the Commission has asked in the context of universal service contributions, whether voice traffic is expected to migrate to broadband Internet platforms.<sup>23</sup> At this time, it would be inappropriate for the Commission to require providers of nascent IP telephony services to contribute to the USF, even assuming IP telephony revenues would be subject to USF

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<sup>21</sup> Under section 622 of the Act, local governments may only impose a franchise fee on a cable operator’s gross revenues derived “from the operation of the cable system to provide cable services.” 47 U.S.C. §542; *see Cable Access NPRM* at ¶ 105.

<sup>22</sup> *See Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service*, FCC 00-J4 (Sept. 24, 2000).

<sup>23</sup> *Wireline Broadband NPRM* at ¶ 82.

assessment. There currently is no evidence that any significant number of customers has “migrated” from circuit-switched to IP-based services. Nor is there evidence that IP telephony is growing at a rate that poses an “immediate threat to universal service support.”<sup>24</sup> In fact, available evidence indicates that IP telephony has not made inroads into the overall volume of telephony.<sup>25</sup>

Moreover, IP telephony is a truly nascent service and should be permitted to develop and grow before USF assessments are considered. The greater risk is that incumbent local exchange carriers will be able to claim that competition from IP telephony justifies the imposition of USF charges on providers of IP telephony, thereby raising the costs of prospective competitors. The potential competitive benefits to consumers in rural *and* non-rural areas from IP telephony far outweigh the theoretical risk to universal service. Just as the Commission’s concerns in the 1960s and 1970s about protecting small market broadcasting led to regulations that delayed the growth of multichannel video services for decades, prematurely imposing USF charges on IP telephony providers could inordinately delay the development of such competitive services.<sup>26</sup>

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<sup>24</sup> *Federal-State Joint Board on Universal Service, Report to Congress*, 13 FCC Rcd 11501 at ¶ 98 (1998) (“*Universal Service Report*”) (declining to subject providers of IP telephony services to universal service contribution requirements given the lack of such a threat). *See also* United States General Accounting Office, *Telecommunications: Federal and State Universal Service Programs and Challenges to Funding*, GAO-02-187, Feb. 4, 2002 at 21-23 (“GAO Report”).

<sup>25</sup> *See e.g.*, GAO Report at 22 and n. 32.

<sup>26</sup> Likewise, if the Commission decides to use connection-based, rather than revenue-based, assessments for contributions to the USF, it should (at a minimum) limit such assessments to connections for public switched services, and Internet-based or IP services that offer connectivity that is functionally equivalent to public switched service, if and when such services gain a significant number of customers.

## **CONCLUSION**

Before the Commission extends the universal service contribution requirement to all providers of facilities-based broadband Internet access services, it must first determine whether such an extension is in the public interest. In doing so, the Commission should evaluate the current size of the USF, all potential contributors to the USF, the effect that requiring USF contributions from all facilities-based broadband Internet access services would have on the Commission's goal of promoting broadband deployment, whether potential contributors offer public switched service or the functional equivalent, and the special circumstances facing providers of cable modem services.

Respectfully submitted,

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